

CITY OF MORGAN HILL  
JOINT CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - SEPTEMBER 20, 2000

**CALL TO ORDER**

Mayor/Chairman Kennedy called the regular meeting to order at 7:08 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Chang, Cook, Sellers, Tate and Mayor/Chairman Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**INTRODUCTIONS**

Director of Public Works Ashcraft introduced new hires Johnny Alejo, *Maintenance Worker I*; and David Guttirez, *Maintenance Worker I*.

**PRESENTATIONS**

Mayor Kennedy presented Finance Department Staff with a *Certificate of Achievement for Excellence in Financial Reporting* from the Government Finance Officers Association of the United States and Canada.

Lori Escobar invited the City Council and the community to the MACSA El Toro Youth Center Expansion Ground Breaking Ceremony to be held Friday, September 22, 2000 at 12:00 p.m. She introduced Luis Perez who will be working as a coordinator for the Youth Center.

Roger Knopf, Committee Member working on the expansion of the El Toro Youth Center facility, indicated that \$90,000 has been received in grants from the Community Development Block Grants and United Parcel Services. It is the Committee's hope to turn this \$90,000 into a \$300,000 project. He felt that the El Toro Youth Center is important to the community and asked the City Council and community to attend the ground breaking ceremony.

Mayor Pro Tempore Tate stated that additional funds are needed to assist in the expansion. If individuals cannot provide physical assistance, he requested that individuals make a financial donation.

**PROCLAMATION**

Mayor Kennedy read a proclamation declaring the month of September 2000 as *Prostate Cancer Awareness Month* and proclaimed September 20, 2000 as *Undoing Racism Day*.

### **CITY COUNCIL REPORT**

Council Member Cook reported that she attends Pollution Prevention meetings which address toxic chemicals, particular of concern is the use of biological chemicals. She indicated that all is going well with the sewer plant. She and Mayor Kennedy are working on flood control and that they would be attending a meeting to be held on Friday, September 22, 2000 with the Water District to address the PL566 project.

### **CITY MANAGER'S REPORT**

City Manager Tewes deferred his report to a subsequent meeting.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter distributed a decision of the city's hearing officer on the Las Casas de San Pedro code enforcement matter. It orders that permanent repairs be made to the balconies within six months of August 7 or that there would be a substantial fine imposed; it allows the property owner 30 days to complete repairs, including ceiling repairs, entry and front bedroom repairs, repairs of leak damage and bathroom exhaust fans and sewer clean outs; and ordered repairs to the pool complex within 30 days. No evictions without the City of Morgan Hill's approval can occur so that there will be no retaliation to the order. She indicated that to date, an appeal has not been received.

Mayor Kennedy announced that a meeting will be held on Thursday, September 28, 2000 at 5:00 p.m. at Las Casas de San Pedro.

### **PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comments.

John Durham, a resident of La Vista Court, requested assistance to remedy the high speed and traffic that is occurring on Sunnyside Avenue, between West Edmundson and Watsonville Road. He said that there are 96-residents trying to enter Sunnyside Avenue. He requested City Council assistance in this traffic concern in order to avoid a serious accident.

City Manager Tewes indicated that the Police Department has been enforcing speed limits on this stretch of road in recent months. He said that staff will continue to look at ways to improve safety in this area.

Council Member Cook noted that part of the road is in the County's jurisdiction. She requested that staff initiate contact with the Sheriff's department to see if they can help with enforcement.

No other comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that Items 4 and 7 be removed from the Consent Calendar. Mayor Pro Tempore Tate requested to comment on Item 10 and Council Member Cook removed Item 11 from the Consent Calendar.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **approved** Consent Calendar Items 1-3, 5, 6, and 8-10 as follows:*

1.     **AUGUST 2000 FINANCE AND INVESTMENT REPORT**

**Action:** *Accepted and filed report.*

2.     **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) QUARTERLY REPORT NO. 3**

**Action:** *Accepted the Report by Minute Action.*

3.     **APPROVAL OF COPY MACHINE PURCHASE**

**Action:**    1) **Authorized** the Purchase of a Konica Copy Machine for City Hall Through NewCal Industries, and 2) **Increased** the Council Services & Records Management Budget within the General Fund by \$18,565.

5.     **APPROVAL OF GRANT FOR INSTALLATION OF BICYCLE RACKS**

**Action:**    1) **Appropriated** \$7,158 from the Unappropriated Street Fund Balance for This Project and 2) **Authorized** City Manager to Execute the Agreement with Valley Transportation Authority (VTA) to Receive Reimbursement from a Transportation Fund for Clean Air (TFCA) 40% Grant for the Construction of Bicycle Racks.

6.     **VTA PROPOSED 30-YEAR SALES TAX FOR TRANSIT PROJECTS AND LIST OF ROAD PROJECTS APPROVED ON AUGUST 22, 2000**

**Action:** *Information only.*

8.     **APPROVAL OF CITY MANAGER HOUSING ASSISTANCE**

**Action:**    1) **Approved** Loans for Housing Assistance to the City Manager and Sign the Related Documents and 2) **Increased** the General Fund Budget by \$544,000.

9.     **CALIFORNIA LAW ENFORCEMENT TECHNOLOGY EQUIPMENT PROGRAM**

**Action:**    1) **Authorized** the Transfer of \$45,000 in FY 00/01 from the Law Enforcement Grants Fund (205) to the General Fund (010), 2) **Appropriated** \$45,000 in FY 01/01 for Grant Expenditures, and 3) **Authorized** the City Manager to Purchase 7 Ruggedized Lap Top Computers in the Amount of \$30,266.

10.    **ANNUAL DEPARTMENTAL WORKPLANS**

Mayor Pro Tempore Tate stated that comprehensive work plan items have been identified by every department to be accomplished in the next 2-3 years. He requested that a workshop be scheduled to allow the City Council to provide feedback on the work plan.

**Action:** *Informational only.*

**4. STATUS REPORT ON COMMUNITY PARK BALLFIELDS**

Mayor Kennedy said that it has been indicted that there are areas in the Community Park ballfields where the sprinklers have been left, resulting in wet and muddy areas.

Recreation Manager Spier stated that a meeting was held yesterday with the ballfield users who raised this issue. She said that staff is aware of the over watering problem and that it will be rectified. She indicated that ball teams would like to see a different type of fine applied, noting that this is a budgetary issue.

**Action:** *On a motion by Council Member Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) Continued Schedule as Established.*

**7. AWARD OF BID FOR CONSTRUCTION OF NEW PARKING LOT AND PAD FOR MODULAR BUILDING AND APPROVAL OF PURCHASE OF USED MODULAR BUILDING FOR CITY HALL EXPANSION**

Mayor Kennedy requested that staff make a presentation on this item so that the public is made aware of what the city will be doing.

Director of Public Works Director presented the staff report relating to City Hall expansion. He noted that 60% of the structures will be permanent fixtures.

Mayor Kennedy stated that space is needed due to the fact that city hall is bursting at the seams and that many city employees are in shared spaces and small cubicles. This impacts efficiency of their work.

Council Member Chang noted that \$300,000+ of the proposed budget will be for a permanent parking lot fixture (60% of the expenditure). She stated that it would be more cost effective to use temporary modular units versus renting space.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) Appropriated an Additional \$150,000 from Unappropriated Public Facilities Impact Fee Fund Balance for this Project, 2) Awarded Bid for Parking Lot/Pad Preparation to HRB Construction in the Amount of \$371,250 and 3) Approved Purchase of Used Modular Buildings for the Sum of \$75,000, Plus Tax, if Applicable.*

**11. TENNANT AVENUE HIGH SCHOOL SITE MEMORANDUM OF UNDERSTANDING**

City Manager Tewes presented the staff report. He indicated that the City Council has not identified

the conditions in which the it might extend services to this Tennant/Murphy site which is located outside the existing city limits. He indicated that Council Member Sellers and Mayor Pro Tempore Tate, the subcommittee appointed by the City Council to work with the School Board in the City-School Liaison Committee, have been working on this issue and would be making a recommendation to the City Council this evening. He informed the City Council that the City-School Liaison Committee will be holding its next meeting on October 12, 2000.

Council Member Sellers informed the City Council that the School Board will be making a final decision on October 16. He indicated that the subcommittee and staff have been looking at several areas to be considered such as traffic mitigation, and recreation site acquisition. It is the subcommittee's goal to have additional information by September 27, 2000. He felt that it made sense to proceed and have preliminary discussions with the other affected parties. The subcommittee can return to the City Council with opportunities to meet identified needs. The City-Liaison Committee has spent time going over with the School District the challenges of the T-1 site and making sure that it identifies every possible concern that may be raised in order to address these concerns. Also, committee members have tried to engage the City of San Jose in discussions. It is anticipated that by September 27, 2000, the Committee will have listed all issues of concerns and make a recommendation. If necessary, the Committee can report back to the Council on October 4. He felt that the committee is becoming more creativity as the process develops in coming up with a solution to the situation. He felt that it would result in a decision that is best for the community and that there will be other opportunities to work with the School District down the road.

Council Member Tate stated that the staff report included a comparative site acquisition improvement cost summary. He noted that dollar figures were not listed under public improvements. He felt that with the use of incentives, the city can improve its funding contribution in terms of the extension of services to the Tennant Avenue site. Also, an aquatic center is proposed at the Tennant site and felt that the City can share in the funding of recreational activities. He felt that there were other areas of opportunity for the City Council to look at in terms of exceeding the standard 50/50 City contribution for recreational facilities. He felt that the City can provide further incentives for both recreational and public improvement extension of services to the site. He requested that the Council indicate whether this was something it would like to pursue.

Mayor Kennedy agreed that there is more that the Council can do in terms of impact fees to help make the Tennant Avenue site more attractive to the School District.

Council Member Tate suggested that the Council look to see if there are any areas in which it can make a greater contribution to the Tennant/Murphy T-1 site as an incentive to the School District.

Council Member Cook said that it was hard to believe that the public improvement costs are the same. She asked if the Sobrato site requires a sewer lift station? City Manager Tewes said that staff did not analyze in detail the individual requirements for each site. He said that there is a cost difference of approximately \$2.5 million.

Council Member Cook noted that the School District is only purchasing the land that the road would be built upon at the Sobrato site. She referred to the \$1.4 million in structure costs. City Manager Tewes indicated that \$1.4 million will be used to purchase existing structures at the T-1 site.

Council Member Tate clarified that it is hoped that existing structures can remain and that the residents would be comfortable living on the site. He suggested possible recreational facilities across the street.

Council Member Cook asked if the property owners would be expecting reimbursement for their legal difficulties and eminent domain? She requested that the table be explained at the next meeting.

City Manager Tewes felt that this is a helpful analysis to identify the differential costs of one site versus the other. He noted that this table was not prepared by engineers nor accountants but that it was prepared by the City-School Liaison Committee members.

Council Member Sellers said that he was comfortable with the range of costs that might be incurred at either site. He reiterated the committee's desire to minimize the need to relocate individuals.

Council Member Chang noted that the committee has identified that the City of San Jose would contribute \$2-\$3 million. She asked if this is a figure that has been committed to by the City of San Jose?

Mayor Pro Tempore Tate and Council Member Sellers stated that additional time is needed to obtain a commitment from the City of San Jose. It was noted that the City of San Jose has indicated that they will do everything that they can to prevent the Sobrato site from proceeding.

Council Member Tate requested that Council Members identify other areas where additional incentives can be applied.

Mayor Kennedy and Council Members Chang and Cook stated their support of providing incentives for the T-1 site to a maximum amount. Council Member Chang requested a breakdown of the public improvement costs.

Council Member Sellers said that maintenance costs need to be included if an aquatic center or other recreational facilities are built.

Council Member Cook stated that she voted for the school bond issue. When she voted for the school bond measure, there was a sum of money that was expected to cover the cost of building a new high school. As a council member, she did not want to duplicate any costs from the City to the School District because she already voted to give the School District funds. She stated that she needed justifications to give the District additional funds. If there is a savings to the School District, she wanted to know what would be done with the savings. She also wanted to know that the money given by the City goes toward building the high school and that City money does not go into the School District's general fund (hold School District accountable for City funding).

Mayor Kennedy said that it makes sense to partner with the School District to share recreational facilities as they are needed. He did not believe that it made sense to build duplicate facilities and pay duplicate maintenance costs. He recommended that resources be pooled and that the City and School District work together.

Council Member Sellers said that City is not interested in lining the School District's pocket nor is the

District trying to acquire more money than they need at the expense of the City. The District was given land to the north to build a school. The issue is how can this be made into a good public policy and proceed in a way that make sense for both entities. He stated that he felt comfortable proceeding having heard what the Council has stated this evening.

Mayor Kennedy opened the floor to public comment.

Larry Carr, School Board Member and Member to the City-School Liaison Committee, agreed that these are rough numbers and that these are not numbers put together by professional staff. These were numbers that the District has used in other types of settings and guesstimates. The four or five line items were based on an appraisal drive by of the Tennant site. Access to the site has not been gained to perform a full appraisal. He said that it is hoped that the information would be helpful to make a distinction between the two properties. He indicated that the District held a public hearing on September 16, 2000 and that 19 members of the public attended, expressing their views about site acquisition. He indicated that there would be further opportunities for the public to address the School District on October 9 and 16 when the District expects to certify the EIR and give direction to staff as to where the District will be headed. He said that the final bond that was passed by the voters did not include funds for a high school site as the property had been donated for a high school. However, there was property acquisition money for the elementary school site. He stated that there will not be a figure from the School District for alternative open space under the Sobrato site. The School District does not have the funds to purchase property but that the School District would be the lead agency for developing a plan and some form of financing for open space. The reason there is no money listed under the Tennant site is due to the fact that no conditions for services for the Tennant site have been identified.

City Manager Tewes said that one of the 9 conditions of the Sobrato site requires the School District to prepare a plan for the preservation of open space in the amount equal to land dedicated for the high school. There is discussion in the Memorandum of Understanding (MOU) to what extent credit should be given for portions of the campus that is open space and used as recreational space. The reason the amount is unknown on the Sobrato site is due to the fact that it is unknown which agency will actually acquire the open space.

No other comments were offered.

**Action:**        *The City Liaison Committee **Received** comments offered by the City Council.*

## **PUBLIC HEARINGS:**

### **12.    EXCEPTION TO LOSS OF BUILDING ALLOCATION, ELBA-00-11:       BERKSHIRE - SINGH - Resolution No. 5422**

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5422, Granting Exception to Loss of Building Allocation.*

**13.     GENERAL PLAN AMENDMENT, GPA-00-01: SAN PEDRO - DICONZA - Resolution No. 5423**

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. No input being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5423, Approving General Plan Amendment.*

**14.     ANNEXATION, ANX-98-01: SUNNYSIDE - SCHILLING - Resolution No. 5424**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. Nita Jenni expressed concern with the construction of additional homes and traffic associated with future development. She stated her opposition to the annexation. No further comments being offered, the public hearing was closed.

Council Member Cook requested staff explain possible road improvements to Sunnyside and Watsonville Road. Mr. Bischoff stated that widening to Sunnyside Avenue would occur with development. He indicated that an environmental analysis, including a traffic evaluation, would be required as part of future development.

Director of Public Works Ashcraft stated that with future development, full improvements would be required for Watsonville Road. The applicant would be required to perform a traffic study to determine if a traffic signal at Sunnyside Avenue and Watsonville Road is warranted. He indicated that in lieu fees have been collected and being held for the widening of Sunnyside Avenue to four lanes at a future date, if determined necessary. Improvements to Sunnyside Avenue would not be required at this time. As this is an annexation request, staff has not made a detail analysis of the required road improvements. Once the project is annexed, development of the project would be subject to being successful under the City's Residential Development Control System.

Mr. Bischoff stated that the General Plan designation for the property is R-1 medium density, similar to surrounding development.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5424, Approving Annexation.*



**15. URBAN SERVICE AREA APPLICATIONS: USA-00-02: SUNNYSIDE-STODDARD**

Director of Community Development Bischoff presented the staff report. He informed the City Council that the City's General Plan shows urbanization of all of the property south of Edmundson Avenue to Tennant Avenue. He felt that it makes sense to include the property in the City as city services exist in most of the streets and that the area makes sense as a logical extension for growth. He stated that a street system should be planned that is efficient and logical. He indicated that there is a safety concern with the curvature of the road as people drive quickly on this road, noting that the road rises slightly.

Director of Public Works Ashcraft addressed traffic circulation as it relates to the area and possible development potential. He identified city limit lines for the area.

Council Member Chang indicated that a letter was received from an area property owner stated that a portion of her yard is located with the proposed road alignment.

Mayor Kennedy opened the public hearing.

Bruce Tichinin, attorney representing the applicant, stated that the Planning Commission recommended denial based on area residents raising a concern with a possibly unsafe intersection with future development. He felt that a future intersection would line up with Casino Real, and would increase traffic safety in the area by providing a new left turn lane into Casino Real off of Sunnyside Avenue. He felt that the Planning Commission acted outside its jurisdiction and violated the City Council's standards regarding desirable infill application determination. He felt that the Planning Commission focused on the illusory traffic issue which is not included in the Council's desirable infill standards as a thing to be considered at this stage in planning. He noted that staff has indicated that it is premature to consider traffic safety issues as part of Measure P. He felt that this is also true for an urban service area application which proceeds an annexation application. He did not believe that the City would allow an unsafe intersection to be created. It was his belief that the only decision before the City Council this evening is to determine whether or not the desirable infill standards established by the City Council are met by this application. Staff has indicated that the application has met the desirable infill standards, particularly in the beneficial criteria of gridding water main, elimination of a dead end street and the bonus of a left turn lane into Casino Real. There is no challenge made by the opponents to these benefits. Now that the desirable infill criteria is met, he felt that there is intense opposition from some of the neighbors to the proposal as well as support from some of the neighbors. He reiterated that traffic safety would improve on Sunnyside Avenue with future development. He felt that the issue is that of "not in my back yard (nimby)" by the opponents. He noted that all previous urban service area applications before the Council that have met the desirable infill criteria have been approved by the city. This application is being recommended for denial based on area residents' opposition. He felt that it would deny equal protection to allow nimbyism alone to be the basis for denial of an application when it meets the criteria. He cited support of this proposition in the case of the City of Clayburn v. Clayburn Living Center, Inc., found at 473 U.S. 432, a 1985 case which holds that land use permitting the differentiated to similarly situated uses on the grounds on unsubstantiated nimbyism is a denial of equal protection. He read from page 448 of the Supreme Court decision. He requested that the City Council make its decision on the basis of the law that it has established, that being whether or not the desirable infill criteria has been met.

Council Member Cook indicated that she spoke with Mr. Tichinin and that it was indicated that the traffic engineer, Keith Higgins, would address traffic circulation for the area. She requested that Mr. Higgins address the Council at this time.

Keith Higgins, traffic engineer, indicated that he has been retained as a consultant for the applicant. He addressed the traffic improvements needed in this area. He recommended that a 4-8 foot shoulder on the east side of Sunnyside Avenue be installed. He further recommended that a channelized intersection be installed and that vegetation removal occur with the possible correction of the vertical alignment (site distance constraints). He indicated that traffic counts have been performed. He informed the City Council that he did not address the Planning Commission regarding his comments as he was retained by the applicant 1.5 weeks ago.

Bill McClintock, project civil engineer, indicated that adjacent properties have dedicated right of way that can accommodate road improvements. He indicated that when the ultimate improvements are to be installed, the right of way will be sought. He indicated that the adjacent property owners are in support of the application and that right of way acquisition would not be a problem. He did not believe that there would be a need to acquire right of way on Santa Teresa Boulevard but that there would be a slight right of way required to build the connecting street. He indicated that the improvements would occur and be paid by the property owners at time of development.

Council Cook noted that Mr. Higgins did not identify a solution to the grade issue from the start of the property up to Sunnyside Avenue. Mr. McClintock indicated that the ground slopes away from Sunnyside at 10%. At 10%, this results in two feet of fill. He said that the vertical alignment would be close to 15% grade coming out of the subdivision and then flatten out to 5% close to the intersection. He said that the design would not be as steep as that of Sunshine onto Santa Teresa.

John Brice, 995 La Vista Court, noted that only a small portion of Sunnyside is to be improved. It was indicated that there are undulations to the road that need to be looked at, including site visibility problems. He stated that the existing infrastructure is not adequate for the current traffic flow, speed on Sunnyside is too fast, addition of more housing would exacerbate the traffic problem, and that there would be an impact of an additional 50-70 children to Paradise School. He felt that the infrastructure needs to be improved prior to adding new homes to the area and that there is little substantial benefit of developing a looping water system. He felt that property owners sell land to developers only to move away and leave others with problems associated with development.

Dick Stoddard, applicant, stated that he intends to live in the area. He addressed the process undertaken to date. He felt that the issues of concern would be addressed as part of the development process and that he intends to address these concerns. He said that he commissioned a traffic study based on concerns by the Planning Commission and area residents. This information is being presented to the City Council. He noted that this parcel has been planned by city staff to provide for completion of city streets, completion of water system, and to eliminate stubs of property on three sides from storm drains, water lines, and city streets. He requested that the Council consider staff's recommendation. He addressed the quality of life 40 years ago versus today. He said that he put up with development on three sides of his property and was a good neighbor. He plans to be a good neighbor with area residents, working with them to address concerns to their satisfaction. He requested City Council approval of his urban service area application.

Jim Suddeth, 15910 Sunnyside Avenue, addressed the application denied last year. He noted that last year's application proposed a connecting street further north on Sunnyside and that it was a better planned project than what is being proposed. Last year, he pointed out to the Council that the County is allowing development in the area. He recommended that the city take over the planning of the area and not the county. He concurred with Mr. Stoddard's comments relating to quality of life.

David Cruz, 15820 Sunnyside Avenue, adjacent property owner, indicated that he owns the driveway to Sunnyside Avenue and that the proposed roadway goes through his driveway. He recommended that the road be widened to alleviate problems before allowing further residential development.

Mr. Tichinin said that it is not clear whether Mr. Cruz has an easement or owns his driveway in title. He said that eminent domain can be exercised, if necessary.

Council Member Cook requested that staff comment on Mr. Higgins presentation following public input.

Robert Denney, 955 La Vista Court, expressed concern with traffic safety. He felt that traffic will increase and that the road connecting to Sunnyside will create an unsafe area and become a shortcut for others. He requested that the questions relating to quality of life and safety not be deferred.

Catherine Abate stated that she submitted a letter by fax this morning. She addressed Measure P and the desirable infill criteria developed by the City Council. It was her understanding that the City Council has the discretion to deny this application even if the desirable infill criteria is met. She disagreed with Mr. Tichinin's analysis that the Council is obligated to approve the application once it has been determined that the desirable infill criteria has been met. She felt that the Council has an obligation to look at this application carefully and measure the benefits and the detriments. She did not believe that an analysis of benefit would be complete without looking at the detriments, hazards, and problems caused by development. It was her belief that the intent of the desirable infill criteria is to benefit the general population of the city. The initial intent of the desirable infill is to allow the city to implement a new infrastructure or facilities and improvements and that it was not designed to allow individual applicants to develop their property. She displayed a map that illustrated that Mr. Cruz owns the second parcel, including the driveway to Sunnyside Avenue. She did not believe that the traffic report took into account an existing driveway. She felt that all detriments need to be considered by the City Council.

Jim Sholer, 15770 Casino Real, stated that there is a requirement for the completion of needed infrastructure to meet the benefit test. He did not believe that proof has been presented that demonstrates a need for infrastructure. There is some mention of some benefit of water but that it has been indicated that there is no current need for water. There is no evidence introduced that there is a problem with the stubbed street. There is no support that there is inefficient emergency response. It has been indicated that if the application is approved, it would make the neighborhood a safer area to live in. He said that Planning Commission emphasis rested upon the fact that the project would impose an additional 25-30 homes onto Sunnyside Avenue in an unsafe manner. It has been stated that there could be improvements, making it a safer street. He felt that the Council needs to consider that a project is not proposed before the City Council and that street widening is not proposed. He felt that there is too much uncertainty and that it was not a project to be approved today. He felt that the

Council would increase an unsafe situation if it approves the request.

Barbara Hawk, 831 La Tierra Court, stated her opposition to the construction of 37 homes, 74 additional individuals, 74 cars and 74 children going onto a small road and speeding.

Nita Jenne found the information presented to be vague, ambiguous, and presumptuous. She did not believe that things have changed since last year except that there is more traffic and more buildings. She supported the installation of a park on the site. She stated that the City Council is aware of the traffic impact, lack of infrastructure, and access to the freeway. She stated her opposition to the request.

Mr. Tichinin felt that development would bring improvements that would eliminate the traffic hazard. He felt that this application would grid the water system and eliminate the existing dead end street.

Mr. Ashcraft stated that he was not prepared to address the traffic safety benefits as there are several driveways that cross at various places. Development may result in an unsafe situation due to the grade and driveway. He did not believe that enough right of way exists on Sunnyside to widen the road. He stated that this right of way would need to be acquired from four property owners to accommodate road widening to the north of the property. He noted that Mr. Cruz owns a 10-foot road right of way in fee and that the right of way would need to be acquired from Mr. Cruz.

No further input being offered, the public hearing was closed.

Mayor Pro Tempore Tate noted that new information has been presented to the City Council that was not presented to the Planning Commission. He recommended that the process of bringing new information before the City Council that has not been presented to the Planning Commission be addressed. He said that the question of beneficiality and desirability is subjective. He noted that the Planning Commission forwarded a recommendation to the City Council based on the information they had at hand. He stated that he would have concurred with their recommendation based on the information presented to them until he received the new information this evening. He stated that he wanted to find a methodology that would allow the Planning Commission to review this application again based on the new information submitted.

City Attorney Leichter indicated that the Council has the discretion to refer the application back to the Planning Commission, the Council can choose to disregard the new evidence presented, or that the Council can consider the new evidence and make a decision.

Council Member Cook stated that she would be willing to consider the new information. She noted that the applicant would need to acquire the cooperation of four or more property owners to make the area safe. If it is being stated that eminent domain can be used, she felt that this was a red flag that this application has not been thoroughly evaluated. She felt that the desirable infill criteria is subjective. She felt that the applicant is mitigating a problem that they would be creating. Therefore, she did not know how it is a necessary benefit to the City. She stated that she was willing to move forward and not support the project.

Mayor Kennedy asked staff how the existing traffic safety problems on Sunnyside Avenue could be

resolved? Mr. Ashcraft said that Sunnyside Avenue is a narrow road and helps keep the speed down. He said that speed increases greatly based on the lack of side traffic. The solution would be to improve the road to city standards.

Council Member Chang said that the General Plan Task Force, Planning Commission and the City Council will be meeting next month to discuss traffic issues. It was her belief that this area would be discussed. She recommended that this issue be deferred until it is known how this area will be planned. This may result in referring this item back to the Planning Commission or return to the City Council at such time that it is decided what to do with this area, traffic-wise.

**Action:**        *Council Member Cook made a motion, seconded by Mayor Pro Tempore Tate, to **Adopt** Resolution No. 5425, Denying Application USA-00-02 for Inclusion into the Urban Service Boundary.*

Mayor Pro Tempore Tate did not believe that deferring the application for a month was realistic. Therefore, he recommended that the application be denied at this time. He recommended that the Council consider planning its roads before acting on the application.

Mayor Kennedy noted that the applicant does not have the agreement of the necessary adjacent parcel owners to make this a complete application. He felt that denial would result in the applicant reapplying once agreement is reached with the adjacent residents. He asked if there were any other options available?

City Manager Tewes said that it is typical to negotiate with adjacent property owners to support the project. A second level of agreement would be to dedicate right of way. He said that it is not typical to acquire all of the right of way prior to urban service area amendment.

Council Member Cook stated that she did not support that application because she did not believe that the property belonged in the urban service area. She did not believe that the door should be opened unless the city wants this project to come into the city. She said that the only reason for the road is to accommodate the construction of new homes. She did not believe that homes were needed in this area. She felt that needed infrastructure to the City is very critical. She noted that this was only a policy and that policies can be changed as they are suggested guidelines. She felt that the city has to look back at the intent of Measure P and whether there is a reason to bring the property into the city. She did not believe that there was. Therefore, she would not support its inclusion into the urban service area.

Mr. Bischoff informed the City Council that the property is located within the City's Urban Growth Boundary.

City Attorney Leichter indicated that the desirable infill policy states ". . . to allow for the completion of needed infrastructure, parcels must be capable of providing for one or more of the following . . ." The policy does not state that an application does not have to complete needed infrastructure to meet the criteria. She noted that the road is already master planned as a four-lane road. She said that one needs to look at the criteria when the Council is looking at determining whether or not to grant the application. She disagreed with Mr. Tichinin's interpretation that if an application meets the criteria, the Council has to grant it. The policy leaves discretion with the City Council whether or not to grant

the application, even if it meets the criteria.

Council Member Sellers shared the concerns raised this evening and felt that there were too many concerns to move forward with the project. He would support sending the application back to the Planning Commission with the understanding that the City still needs clarification on the traffic mitigation and to clarify where the City is going with the road. He said that Sunnyside Avenue has been a problem for a long time. He sees a potential for this project to improve the situation and felt that the entire area from Edmundson to Watsonville Road needs to be reviewed. However, he did not know if it made sense to deny the application at this time.

Mayor Kennedy agreed with Council Member Sellers recommendation that the application return to the Planning Commission or to the General Plan Task Force for their assessment to determine a solution to the traffic problem on Sunnyside Avenue. If this project can help to correct the problem, he would support the request.

Council Member Cook noted that when Measure P was adopted, an Urban Growth Boundary was not in place. She said that the General Plan Task Force will not be holding public hearings on the issue of updating the General Plan for several months. She felt that it was unfair not to give the applicant an answer.

City Attorney Leichter said that if the City Council has an application before it with additional information needed, it is in the Council's discretion to ask and receive the needed information. If the Council asks and receives evidence within a reasonable time frame, it would be legally permissible.

Council Member Chang felt that additional information on traffic volume was needed and recommended that action on this application be deferred for a month to allow either the Planning Commission or the General Plan Task Force to review Santa Teresa. She stated that she was not prepared to make a decision at this time.

Council Member Cook noted that this property did not come before the General Plan Task Force for inclusion of the Urban Growth Boundary. She would not support having this application added to the General Plan Task Force's agenda.

Mayor Pro Tempore Tate stated that Council Member Cook addressed arguments for denying the application. He said that he would support the motion to deny if it would move things ahead tonight. However, he did not see any harm in sending the application back to the Planning Commission for further analysis.

**Action:**        *Mayor Pro Tempore Tate withdrew his second to the motion. The motion died for the lack of a second.*

**Action:**        *Council Member Sellers made a motion, seconded by Council Member Chang to refer this application back to the Planning Commission.*

Mr. Bischoff informed the City Council that LAFCo only hears one application per year and that more than likely, the application would not be considered by LAFCo until next year (late fall). He said that

the earliest date that the application would be able to go back to the Planning Commission is October.

Council Member Cook agreed that this is a regional traffic issue. She indicated that the General Plan Task Force has worked very hard for the past two years and that it would be approximately three years before the general plan process is completed. She stated that she would take offense if the City Council forced some of the issues prematurely to the General Plan Task Force.

**Vote:**            *The Motion carried 4-1 with Council Member Cook voting no.*

Mayor Kennedy said that the specific date that the Planning Commission is to reconsider the application was not made as part of the motion. It is the intent to have the application reviewed by the Planning Commission after the General Plan Update Committee has addressed the issue of traffic on Santa Teresa.

#### **OTHER BUSINESS:**

#### **16. REQUEST FOR CITY ASSISTANCE - TOWN CATS ORGANIZATION**

Ava Geddes, member of the Board of Directors for Town Cats, requested City funding to pay for use permit fees associated with the establishment of a cat adoption center. She addressed the beneficial services offered by the Town Cats organization to the community.

John Quick, local veterinarian, did not believe that the city should be placing itself in a position of supporting a group that lack appropriate professional standards of care. He felt that Morgan Hill would be better served if it reaches a contract agreement with the Animal Shelter located in San Martin.

Ms. Geddes said that Town Cats does its best for the care of cats and tries to rectify any problems that they are made aware of. Town Cats works with the veterinarians in the community. Regarding the bad conditions being referenced, she did not believe that Dr. Quick has ever visited any of the foster homes to investigate the situation.

No other comments were offered.

Mayor Pro Tempore Tate stated that he has a problem understanding the community benefit. He noted that the City does not perform this level of animal control. He asked what would be the return to the city/community if the City approves the request? He understood that it was a well-intentioned service and a good service. However, he asked why it should be the city's business to invest in the service?

Council Member Cook said that cats are abandoned in neighborhoods and felt that this is an issue in her neighborhood. Many residents would like to get rid of the cats, noting that the San Martin Animal Shelter will not accept cats. Residents do not have the time to take the cats to Santa Clara. Therefore, the problem keeps getting worse. She felt that this is a responsibility of the city. She recommended that cats be registered in order to generate fees as is done with dogs under animal control in the city. It was her belief that at time of budget review that the City would be looking at what the state would be requiring of the city for animal control. If the state will be requiring cities to address animal control, she felt that this may be a way to address the issue.

City Manager Tewes informed the City Council that Chief Schwab prepared a response to request for funding at time of budget review. At that time, it was not recommended that additional funds be placed in the budget for this purpose.

Council Member Sellers felt that the City needs to establish whether it will provide assistance based on a policy that makes sense for the future as well as to address future requests from other non profit organizations. He felt that with a combination of staff's recommended actions A and C, the Council could consider paying the application fees provided that a certain base criteria is met. He recommended that staff address the need and the overall benefit to the community. Staff to return with the priorities, establishing a policy which can apply to other non profits, if interested. The policy could incorporate a review by staff to determine if basic standards of eligibility are met. He requested that Chief Schwab address the long term animal control needs.

Chief of Police Schwab stated that the City supplies the level of animal control services that are required by state law and that the City exceeds required standards in certain areas. The City requires the licensing of dogs but that it does not require the licensing of cats unless individuals voluntarily license them. Staff refers community members to community organizations to assist the city with the trapping of feral cats. One of the reasons staff did not recommend a donation of \$10,000 to Town Cats at budget time was due to the fact that the City is currently involved in a process to look at this very issue county wide. Staff is in the process of developing revised ordinances to be brought before the Council at the beginning of the year. The issue before the City Council this evening is a separate issue from the level of animal control services to be provided. The issue tonight is whether the Council should set a policy or find a means/justification to waive development impact fees/conditional use permit fees for non profits. He indicated that the state has certain criteria for mandated animal control services. The collection of stray cats is not among these.

Mayor Pro Tempore Tate stated that he was trying to tie a policy to the amount of animal control benefit that the city would receive.

Council Member Cook felt that if the city is making referrals to the Town Cats organization, the city should be contributing to this resource as a link exists. She recommended that a contract be entered into by the City and Town Cats for their referral services and that they not be treated as a non profit.

Mayor Kennedy stated his support of waiving city related fees on a one time basis until such time that the City determines what makes sense in the long term.

Mayor Pro Tempore Tate concurred with Council Member Cook's comment that if the city is using an organization as a referral, there services should be supported. However, if the City Manager is stating that it is not a priority to the city, how can these services be recommended if it is not a priority.

Council Member Chang supported waiving City fees and recommended that a policy be established to assist in the waiver of fees for other non profit organizations under similar circumstances. She recommended that a check and balance procedure be developed for the waiver of fees for non profit organizations.

**Action:**        *On a motion by Council Member Chang and seconded by Council Member Cook, the*



*City Council, on a 4-1 vote with Mayor Pro Tempore Tate voting no, **waived** city fees in the amount of \$2,414 and directed staff to establish a policy prior to a determination of next year's budget.*

Council Member Sellers felt that a policy should apply to non profit organizations who provide a benefit to the community for approval of a fee waiver. He requested that standards be established for Town Cats as they relate to basic standard care if this is to be a long term relationship.

Mayor Pro Tempore Tate expressed concern with the precedent that would be established. He felt that the study should be completed to determine the county wide animal services to be provided.

**Action:** *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **agreed** to extend the meeting time to midnight.*

## **17. COMMUNITY AND CULTURAL CENTER PLANS AND BUDGET**

Director of Community Development Bischoff presented the staff report and identified a cost of \$12,268,000 for full build out of the community center. He indicated that Franz Steiner and Jackie Keller with VBN Architects were present to address the schematic design of the community center and that Clara Shaver, Richard Sampson and Associates, was present to address the appropriateness of the 8% design contingency and the 8% construction contingency.

Mayor Kennedy felt that the design construction contingency of \$700,000 (8%) is too high.

Council Member Chang requested that the Chief of Police Schwab address the safety aspect of the design. Chief of Police Schwab indicated that the design concept amply incorporates principles in crime prevention through environmental design and the principles of defense space, therefore, it is a safe design.

Council Member Cook stated that she is finding that she is not receiving plans until she arrives at meetings and not in advance to a meeting to adequately review them. She expressed concern that momentum is lost between meetings as it takes too long to receive information in order for the City Council to have some sort of continuum.

Mayor Kennedy noted that this was the schematic design phase. He felt that the City Council has to provide staff and the architects with general direction. The process at this level is another step of approval in which changes are incorporated. The architect will return with a design incorporating finished selections for the City Council to look at. He felt that there would be ample time for the City Council to review design elements prior to the working drawings.

Council Member Cook stated that she was not pleased with some of the elements of design. She expressed concern that the front of the Gavilan building facing Monterey Road is plain. She was not pleased with the use of the wanes coating because it leaves half of the front wall blank. The roofline was blocked and squared, giving the appearance of a strip mall. She recommended the use of a gable roof to add architectural detail. She recommended the use of curves to soften the design. She recommended that the roof over the administration building be more welcoming and not be so abrupt.

She felt that the building was starting to look like a modern building and that it was not representative of the design of buildings in the downtown area. She also recommended the use of overhang and shadows in the roof design.

Mr. Steiner stated that the craftsman design is similar to that of the Danville library community center.

Mayor Kennedy stated that he would prefer a less natural finish.

Council Member Sellers noted that the Council will still have an opportunity to comment on the design elements in the future. Overall, he felt that the design was sound and that he was partial to the craftsman style design. He recommended that the statement of the octagonal building be more significant.

Director of Community Development Bischoff informed the Council that there will be further refinements to the elevations. The City Council will have the opportunity to address the finishes, colors, and the inside of the building. Staff agrees that the design needs further refinement. Staff will take the comments offered by the City Council and work on them. Staff will look at the front of the Gavilan building more and refine the octagon design. Staff will include natural material to the extent possible, utilizing more of a craftsman design, and to look at the service area.

Mayor Pro Tempore Tate concurred with the comments expressed this evening. He supported the suggestion of having more of an interactive mode and to have the ability to review the design prior to a major check point on an on going basis.

Council Member Sellers and Mayor Kennedy concurred that the City Council has to have the ability to review plans in advance of a meeting.

At the request of Mayor Kennedy, Mr. Steiner addressed how people will interact and how the space will be utilized.

**Action:**        *On a motion by Council Member Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Schematic Design of the Community Center.*

Council Member Cook asked if the City Council is satisfied with the timeline for the design phase of the project?

Mr. Bischoff stated that the design development phase is due to return in three months for design development and four months later to review working drawings.

Mr. Steiner indicated that he would need the City Council's authorization to proceed to the next phase with a clear understanding of the changes to be made at the next phase such as the Gavilan building and the octagon facade. He can return with revised design relatively quickly in order for the City Council to confirm the design direction.

Mayor Pro Tempore Tate recommended that preliminary designs be forwarded to the City Council in advance of meetings.

Mayor Kennedy recommended that a subcommittee or individuals visit the architect's office to meet with the architects to help speed up the process.

Mr. Bischoff recommended that there be a Council consensus in the direction that the design should take versus individual suggestions.

Council Member Chang recommended that monthly meetings be held.

Mayor Kennedy opened floor to public comment.

Robert Benich, 498 Via Sorento, stated that it was time for the City Council to take bold leadership. He noted that the Community Center is in the architectural phase. The City Council has to be bold and brave, even if it costs more. He did not believe that the citizens would criticize the City Council if the community ends up with a community center that is dynamic, one that they will be proud of. He felt that the City Council would be criticized if it starts cutting cost and starts eliminating things, ending up with a mediocre building and design that looks like another governmental building. This location is center to the city and felt that the design has to reflect this fact. The community center has to be the focal point and the start of a Renaissance of the city and that it is not the time to be cheap. He recommended that the following elements be retained: use of fountains, streams, band shell and the arbor, a rose garden, interactive water fountain and the use of tile roof. He recommended that the design be one that has a lot of architectural pizzaz, one that makes the city proud.

**Action:**        *On a motion by Council Member Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** Staff to Proceed with the Design and Development Phase of Project Design.*

Council Member Chang noted that the budget is greater than the original estimate of approximately \$7 million of three years ago. She noted that the value of housing prices has doubled. She noted that it is projected to cost \$12 million to build a good project and that she would support the expenditure.

Mayor Kennedy said that it has been suggested that the fountain be eliminated as it may not be an appropriate element to use.

Council Member Cook stated that the City could seek corporate donations for the installation of some of the element features (instill a sense of giving in the community).

Council Member Sellers recommended that staff develop a model that looks at community sponsorship of added element features to the community center for Council consideration.

Mayor Kennedy recommended that a list of element features be put together in a list and that the City Council seek businesses/individuals to sponsor/contribute to a feature.

**Action:**        *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Amended** the C.I.P. to Acknowledge Changes in the Scope and Estimated Construction Costs for the Project and to incorporate \$12.1 budget, as recommended by staff (includes reduction of \$100,000 with the elimination*

*of the entry fountain). Staff to put together a list for the City Council to seek corporate sponsorship.*

**SECOND READING OF ORDINANCE:**

**18. ORDINANCE NO. 1487, NEW SERIES**

An Ordinance of the City Council of the City of Morgan Hill Approving Amendments to Chapters 18.04, 18.30, and 18.74 of the Morgan Hill Municipal Code, ZA-98-11.

**Action:** *It was the consensus of the City Council to **continue** the adoption of Ordinance No. 1487, New Series to its meeting of October 4, 2000 to allow staff the opportunity to incorporate the amended changes.*

**19. ORDINANCE NO. 1488, NEW SERIES**

An Ordinance of the City Council of the City of Morgan Hill Approving Development Standards and Allowable Uses for Five Planned Unit Development (PUD) Areas, ZA-98-11.

**Action:** *It was the consensus of the City Council to **continue** the adoption of Ordinance No. 1488, New Series to its meeting of October 4, 2000 to allow staff the opportunity to incorporate the amended changes.*

**CLOSED SESSION:**

City Attorney Leichter announced the following closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

Legal Authority:	Government Code 54956.8 & 54956.9(c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Road (St. Louise Hospital property)
City Negotiators:	Agency Members; Executive Director; Interim Agency Counsel; and F. Gale Conner, special counsel
Closed Session Topic:	Potential Litigation

**2.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code Section 54956.9(c) - One (1) potential case

**3.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority:	Government Code 54956.8
Property:	APN 779-04-010; 14465 Monterey Road; 29.2 acres
Negotiating Parties:	
For City:	City Manager; Public Works Director
For Property Owners:	William Sing and Young Kay Mock; The GFI Company
Under Negotiation:	Price and Terms of Payment

**4.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority:	Government Code 54956.8
Property:	APN 817-13-001; 37.8 acres (Soccer Complex)
Negotiating Parties:	
For City:	City Manager; Public Works Director
For Property Owners:	Tadashi & Alice A. Kadonaga, Trustee
Under Negotiation:	Price and Terms of Payment

5.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATIONS & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority:	Government Code 54956.8 & 54946.9(c)
Property:	APN 825-06-002, 003, 029, 030; 36.6 acres (Railroad/Maple - Butterfield Retention Basin Site)
Negotiating Parties:	
For City:	City Manager; Public Works Director
For Property Owners:	Costa Family Partners
Under Negotiation:	Price and Terms of Payment

***Redevelopment Agency & City Council Action***

6.

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR**

Legal Authority:	Government Code 54956.8
Real Property Involved:	2.93 and 2.03 acre parcels located on the west side of Monterey Road, north of Cosmo Avenue (APN 767-17-046 & 047)
City/Agency Negotiators:	City Manager/Executive Director; Interim City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
Closed Session Topic:	Acquisition of Real Property

7.

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR**

Legal Authority:	Government Code 54956.8
Real Property Involved:	A 8.93 acre parcel located on West Edmundson Avenue, east of Community Park (APN 767-18-025)
City/Agency Negotiators:	City Manager/Executive Director; Interim City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
Closed Session Topic:	Acquisition of Real Property

8.

**CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR**

Legal Authority:	Government Code 54956.8
Real Property Involved:	An 8.25 acre parcel located on Diana Avenue, west of the Future Butterfield Boulevard extension (APN 726-12-006)
Negotiators:	
For City/Agency:	City Manager/Executive Director; Interim City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
For Property Owners:	Kontrabecki Associates ( or appropriate owner)
Closed Session Topic:	Acquisition of Real Property

**PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the above listed closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 12:08 a.m.

**RECONVENE:**

Mayor/Chairman Kennedy reconvened the meeting at 1:19 a.m.

**CLOSED SESSION ANNOUNCEMENT:**

City Attorney Leichter announced that no reportable action was taken on the above listed closed session items.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

- Staff to develop a model that looks at community sponsorship of added element features to the community center for Council consideration.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 1:20 a.m.

**MINUTES RECORDED AND PREPARED BY:**

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**Irma Torrez, City Clerk/Agency Secretary**